

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
NOTICE OF MOTION NO.1759 OF 2004  
IN  
SUIT NO.2685 OF 1997

Bennett Coleman and Co.Ltd.  
and anr. ... Plaintiffs

v/s

M.V. Oranienburg and ors. ... Defendants

Ms Pallavi Desai i/b Mrs Ratna Bhargavan for Plaintiffs.

Mr K. Kishore i/b M/s V. Legal and Co. for Defendant

No.3.

**CORAM : D.K.DESHMUKH J.**

**DATE : 15TH APRIL 2005**

**P.C.: -**

1. This is a notice of motion taken out by the defendant No.3 for rejection of plaint as against defendant No.3. According to the defendant No.3, the plaintiffs have filed this suit for damages because the cargo that was booked by the plaintiffs on the vessel of defendant No.1 was booked by the defendant No.3. According to the averments in the plaint, the defendant No.3 was an agent of the defendant No.1. Similarly, several averments in the plaint, particularly averments in paragraphs 9 and 10, show that the liability of the defendant No.3 as alleged by the plaintiffs is as an agent. The learned counsel appearing for defendant No.3, relying on a judgment of this Court in the case of Midland Overseas v/s m.v. 'CMBT Tana' and others, reported in AIR 1999 Bombay 401, states that a suit against agent of a disclosed principal is not maintainable. The learned counsel appearing for plaintiffs, apart from seeking time to file reply, is not in a position to say anything. In my opinion, once the motion is admittedly served on the plaintiffs in June 2004, there can be no justification for the plaintiffs not to file reply. The motion is based really on the averments in the plaint itself.

Therefore, there is no question of plaintiffs filing any reply. The averments in the plaint clearly show that the defendant No.3 has been sued in his capacity as agent whose principal has been disclosed. In this view of the matter therefore, and in view of the law laid down by this Court in the judgment cited above, this motion deserves to be granted. Notice of motion is granted in terms of prayer clause (a). Notice of motion is disposed off.

. Parties to act on the copy of this order duly authenticated by the Associate / Personal Secretary as true copy.

. Certified copy expedited.

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